

In the Matter of GLOBE NEWSPAPER COMPANY and NEWSPAPER GUILD  
OF BOSTON

*Case No. R-1413.—Decided October 7, 1939*

*Newspaper Publishing Industry—Investigation of Representatives:* controversy concerning representation of employees: controversy concerning appropriate unit; employer's refusal to grant recognition of union for unit claimed—*Unit Appropriate for Collective Bargaining:* industrial unit for employees in the editorial, maintenance, and so-called commercial departments, and, conditionally, for composing-room boys and helpers, excluding certain supervisory employees; functional interdependence and coherence; sufficient history in the industry for joint bargaining on behalf of editorial and commercial employees irrespective of the union's admitted lack of a majority among the commercial employees and irrespective of the union's failure to include the commercial employees under its prior contract with the employer—*Election Ordered*

*Mr. Bernard J. Donoghue*, for the Board.

*Mr. Francis T. Leahy*, and *Mr. Edmund A. Kelleher*, of Boston, Mass., for the Company.

*Mr. Abraham J. Isserman*, of Newark, N. J., for the Guild.

*Mrs. Evelyn Neilson Cooper*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On April 5, 1939, Newspaper Guild of Boston, herein called the Guild, filed with the Regional Director for the First Region (Boston, Massachusetts), a petition, and on May 10 and June 19, 1939, two amended petitions, alleging that a question affecting commerce had arisen concerning the representation of employees of Globe Newspaper Company, Boston, Massachusetts, herein called the Company, and requesting an investigation and certification of representatives, pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 24, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On June 3, 1939, the Regional Director issued a notice of hearing, and on June 16, a notice of postponement of hearing, copies of which were duly served upon the Company, upon the Guild, and upon the American Federation of Labor, herein called the A. F. of L., as representative of certain of the Company's employees covered by subsisting collective contracts. Pursuant to notice, a hearing was held on June 20, 22, and 23, 1939, at Boston, Massachusetts, before Peter F. Ward, the Trial Examiner duly designated by the Board. The Board, the Company, and the Guild were represented by counsel and participated in the hearing. The A. F. of L. did not appear. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY<sup>1</sup>

Globe Newspaper Company, a Massachusetts corporation having its principal office and place of business in Boston, Massachusetts, is engaged in the publication, distribution, and sale of daily and Sunday newspapers. About 13 per cent of its daily circulation and about 17 per cent of its Sunday circulation is outside the Commonwealth of Massachusetts. A substantial portion of the paper, newsprint, machinery, news, advertisements, photographs, comic strips, cartoons and other features, magazines, and newspapers used by the Company is received from sources outside the Commonwealth. The Company maintains a news-collection office in Washington, D. C., and sales and advertising agencies in several cities throughout the country. It is a member of the Associated Press and the North American Newspaper Alliance. A basic number of 960 persons are employed who are assigned for administrative purposes to 6 departments: advertising, circulation, and business, herein collectively referred to as the commercial departments, editorial, mechanical, and building maintenance. The Company concedes the jurisdiction of the Board.

#### II. THE ORGANIZATION INVOLVED

Newspaper Guild of Boston is a labor organization affiliated with the American Newspaper Guild, admitting to its membership "any person gainfully employed in and devoting the major part of his

<sup>1</sup> The findings in this section are based largely upon a stipulation of facts.

time to an editorial, business, circulation, promotion, or advertising department, or allied groups of employees, of a news publication," in Boston and vicinity. The American Newspaper Guild is affiliated with the Congress of Industrial Organizations.

### III. THE QUESTION CONCERNING REPRESENTATION

Prior to June 1937, the jurisdiction of the Guild was limited by its constitution to editorial employees. Upon this basis, the Guild negotiated a contract with the Company early in 1937. At a convention in June 1937, the American Newspaper Guild voted to extend its jurisdiction to include employees in the so-called commercial departments and other allied groups who do not fall within the jurisdiction of established craft jurisdictions. Upon this basis, but before its organization was coterminous with its extended jurisdiction, the Guild, on May 4, 1938, executed an exclusive bargaining contract with the Company for a term of 1 year, covering the editorial department (including artists and photographers) and the building-maintenance department. Early in 1939, the Guild began negotiating with other newspapers in Boston for contracts covering broader units including employees in the various newspapers' commercial departments. In accordance with this policy, the Guild communicated with the Company at that time, announcing that it was ready to bargain for a new contract to supplement its 1938 contract expiring on May 4, 1939, and advising the Company that for this purpose it represented the commercial employees in the advertising, circulation, and business departments as well as the editorial and maintenance employees. The Company conceded the Guild's right to bargain for the editorial and maintenance departments but demanded proof of a majority in the commercial departments as a condition precedent to the opening of negotiations. The Guild thereupon filed the petition in this proceeding. On May 4, 1939 the Guild's 1938 contract with the Company terminated.

We find that a question has arisen concerning representation of employees of the Company.

### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE APPROPRIATE UNIT

In its petition, as first amended, the Guild alleged that an appropriate unit consists of "all employees of the company in editorial, building maintenance, advertising, circulation, and bookkeeping departments, except executives, part-time and temporary employees, space writers, employees having independent contractor's status, composing room boys and helpers, and members of other unions now having contractual relations with the company." In its second amended petition the Guild clarified and at the same time modified its position by alleging that "all employees of the company in the editorial and commercial divisions, including editorial, business, circulation, advertising, building maintenance and allied groups, excluding executives, temporary employees, certain part-time employees, space writers, employees having independent contractor status, and those employees who are members of or eligible for membership in established craft unions and who are covered by existing collective bargaining agreements," constitute an appropriate bargaining unit. At the close of the hearing, the Guild again changed its position with regard to the composing-room boys and helpers, stating that it was no longer urging, but rather was leaving to the discretion of the Board, their inclusion within the appropriate unit.

The record shows the Company to be operating under collective bargaining agreements with the following labor organizations: Boston Typographical Union No. 13, Boston Stereotypers' Union No. 2, Boston Newspaper Printing Pressmen's Union No. 3, Boston Paper Handlers, Plate Boys and Press Clerks' Union, Local 21, Boston Photo-Engravers' Union No. 3, International Brotherhood of Electrical Workers, Local No. 3, and International Association of Machinists, Boston Lodge No. 264, for certain employees in the so-called mechanical department, and Boston Mailers' Union No. 16, and Newspaper Chauffeurs, Distributors & Helpers L. U. No. 259 for certain employees in the circulation department. By stipulation between the parties, it was agreed that none of the foregoing organizations claimed to represent any of the employees claimed by the Guild in this proceeding, and we so find.

The Company's position in effect is that, in the absence of a showing of a Guild majority in the commercial departments, these departments constitute an appropriate unit distinct from the editorial and maintenance departments, or alternatively that the employees in the commercial departments should vote separately to determine whether or not they desire to be included in the proposed unit. During the hearing, the Guild admitted its lack of a majority in the commercial departments, offering proof however of majority representation in the broader unit.

In other representation cases which have arisen in the newspaper-publishing industry, we have found a unit, substantially similar to the unit here proposed by the Guild, to be appropriate.<sup>2</sup> As in those cases, the Company's editorial and commercial departments are shown to be functionally coherent and interdependent. That the functions of its maintenance department are adequately related for the purposes of collective bargaining has been conceded by the Company for the purposes of, and demonstrated by experience under, the Guild's 1938 contract. The admitted lack of a Guild majority in the commercial departments only does not preclude our finding the proposed bargaining unit to be appropriate. There is sufficient precedent throughout the industry, as evidenced by some 35 subsisting Guild contracts, for joint bargaining on behalf of commercial and editorial employees. There is no separate bargaining history for the Company's commercial employees and no rival claimant to the representation of such employees which might otherwise justify a departure from the aforementioned decisions.<sup>3</sup> We shall find accordingly.

During the hearing the parties delimited the unit with particularity by agreeing to the exclusion of 23 persons listed on the Company's Editorial pay roll (hereinafter named in Appendix A) and 14 persons listed on the Business Office or commercial pay roll (hereinafter named in Appendix B) and further by agreeing to the inclusion of 6 persons listed on the Composing Room pay roll (hereinafter named in Appendix C). All of said pay rolls are in evidence. We shall accede to the mutual desires of the parties and find the employees named in Appendices A and B excluded from, and the employees named in Appendix C included in, the unit.

There is controversy, however, over 11 named persons. Eight of these the Guild desires to have excluded, six as executives and two as special cases for whom allegedly it cannot bargain. The remaining three the Guild wants included on the ground that they are regular, not part time, employees. Generally with respect to these persons, the Company contended that their exclusion or inclusion, as the case may be, had been arbitrarily fixed by the Guild. In partial support of this contention, allusion is made to the fact that several of the employees here sought by the Guild to be excluded had not been so excluded under its 1938 contract. The Guild, on the other hand,

<sup>2</sup> See *Matter of Seattle Post-Intelligencer Department of Hearst Publications, Inc. and Seattle Newspaper Guild, Local No. 82*, 9 N. L. R. B. 1262; *Matter of New York Evening Journal, Inc. and Newspaper Guild of New York*, 10 N. L. R. B. 197; *Matter of Brooklyn Daily Eagle and Newspaper Guild of New York*, 13 N. L. R. B. 974; *Matter of New York Post, Inc. and Publishers Service, Inc. and Newspaper Guild of New York*, 14 N. L. R. B. 1008.

<sup>3</sup> Cf. *Matter of Boston Daily Record (New England Newspaper Publishing Co.) and Newspaper Guild of Boston (American Newspaper Guild)*, 8 N. L. R. B. 694; *Matter of Milwaukee Publishing Company and Milwaukee Newspaper Guild (C. I. O.)*, 10 N. L. R. B. 389. And see *Matter of News Syndicate Co., Inc. and Newspaper Guild of New York*, 4 N. L. R. B. 1071.

maintained that its proposed exclusions and inclusions had been determined under its constitutional rules of eligibility. It argued that any apparent inconsistency between its present position and that manifested by the 1938 contract was due to the fact that it had since become more fully apprised of the nature of the particular positions held by the several persons in question. But at the same time the Guild disputed the Company's construction of its 1938 contract. Under these circumstances, we do not feel constrained to adhere to the terms of the prior contract in resolving the instant controversy.<sup>4</sup> We shall therefore proceed to treat specifically of the 11 mentioned employees.

*Executives*<sup>5</sup>

Alexander Haviland is night city editor in charge of the city department, admittedly one of the three major subdepartments of the editorial department. As such his duties correspond to those of the day city editor whose exclusion has been consented to by the parties and herein approved. We shall exclude him from the unit.

Roy Johnson is considered by the Guild to be one of two alternating night editors in charge of the copy desk, the other one of whom the parties agreed to exclude and shall herein be excluded. Like the city department, the copy desk is admittedly one of the major editorial subdepartments. But because Johnson is only acting in this capacity during the illness of the regular night editor, we shall not exclude him from the unit.

Victor Jones is sports editor and in addition serves as managing editor 2 nights a week. In the latter capacity his duties are the same as those of the managing editor for the other 5 nights, who shall herein be excluded upon the consent of the parties. As sports editor he is in charge of the sports department, the third of the major editorial subdepartments. The Guild seeks to exclude Jones as one of the managing editors but, in the absence of a showing that he is permanently assigned to that position, we shall not exclude him from the unit on that basis. However, we shall exclude him as sports editor because of his position as head of one of the principal editorial subdepartments.

F. Ambler Welch is the Sunday editor with a staff of about six employees. It is apparent from the record that the Sunday subdepartment is sufficiently autonomous and that Welch's control thereover is sufficiently complete to warrant his exclusion from the unit, and we shall so exclude him.

<sup>4</sup> Cf. *Matter of American Can Co. and Engineers Local No. 30, Firemen and Oilers Local No. 56*, 13 N. L. R. B. 1252.

<sup>5</sup> See *Matter of Brooklyn Daily Eagle and Newspaper Guild of New York*, *supra*, for the general principle governing the exclusion of minor supervisory employees in the newspaper-publishing industry.

Stanwood W. Phinney is head of the bookkeeping subdepartment of the advertising department with authority to make recommendations as to raises and the hiring and discharging of employees. Although this degree of administrative control might otherwise be determinative of his exclusion, we shall nevertheless include him in the unit because the record shows the bookkeeping subdepartment to be in no way autonomous but, on the contrary, to be merely a subdivision of the advertising department.

Bernard J. Silva is assistant head of the advertising bookkeeping subdepartment. He shall be included in the unit for the same reason that Phinney shall be included.

### *Special cases*

Walter Barnes is considered by the Guild to be a pensioner. He is a retired sports editor who works a few hours daily, largely on self-assigned tasks, but who nevertheless receives a weekly salary. His particular conditions of employment are no warrant for our not finding him to be an employee for the purposes of collective bargaining. We shall therefore include him in the unit.

Frank Sibley is an editorial writer who contributes five daily articles each week and is paid a weekly salary but who, due to illness, performs his work at home. Like Barnes, he shall be included in the appropriate unit.

### *Part-time employees<sup>6</sup>*

Phyllis Watts is one of two assistants in the society department. Her sister is the other assistant and her inclusion is not contested. Both girls do the same sort of work, sharing between them the coverage of social events, though the salaries of both are included in the sister's pay check. We see no reason to include the one and not the other. Accordingly, Phyllis Watts shall be included in the unit.

Lucien Price is an editorial writer who works full time over a period of 6 or 8 months and then takes several months' leave without pay. He is regularly enough employed to be included in the unit, and we shall so include him.

Austin Waldron is a "call" photographer who reports daily although he is not usually employed every day in each week. He shall be included in the unit as a regular employee.

<sup>6</sup> See *Matter of Daily Mirror, Inc. and Newspaper Guild of New York*, 5 N. L. R. B. 362. Cf. *Matter of Times Publishing Company and The Newspaper Guild of New York*, 8 N. L. R. B. 1170; *Matter of Brooklyn Daily Eagle and Newspaper Guild of New York*, *supra*.

*Composing-room boys and helpers*<sup>7</sup>

As previously stated, the Guild in its first amended petition requested the exclusion of the 18 composing-room boys and helpers from the appropriate unit; in its second amended petition sought their inclusion; then, at the close of the hearing, expressed its willingness to leave their inclusion to the discretion of the Board. The American Newspaper Guild and the International Typographical Union were currently negotiating for their representation by the latter organization. It was reported by the Guild during the hearing, however, that an early settlement of the matter then seemed unlikely. The Company urged the inclusion of the composing-room boys and helpers; while both parties stipulated that they were not eligible for membership in, and not covered by the Company's contract with, the Typographical Union. Under the circumstances, we shall include the composing-room boys and helpers in the unit on condition, however, that if the International Typographical Union hereafter provides for their representation we shall reconsider the appropriateness of their inclusion in such unit.

We find that the following employees of the Company constitute a unit appropriate for the purposes of collective bargaining: All employees on the Editorial (including artists and photographers), Business Office (or commercial), and Building Maintenance pay rolls, the composing-room boys and helpers and those persons on the Composing Room pay roll who are named in Appendix C, but excluding the employees named in Appendices A and B and, in addition, Alexander Haviland, Victor Jones and F. Ambler Welch; and that such unit will insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

## VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing the Guild offered proof of representation among 188 of the 364 employees in the appropriate unit. The Company contested the Guild's proof as to 11 employees and urged an election. Under the circumstances we find that the question which has arisen concerning the representation of employees can best be resolved by holding an election by secret ballot to determine whether or not the employees desire to be represented by the Guild.<sup>8</sup> The Company's

<sup>7</sup> See *Matter of New York Post, Inc. and Publishing Service, Inc. and Newspaper Guild of New York*, *supra*.

<sup>8</sup> See *Matter of The Cudahy Packing Company and United Packinghouse Workers of America, Local No. 21 of Packinghouse Workers Organizing Committee, affiliated with the Congress of Industrial Organizations*, 13 N. L. R. B. 526; *Matter of Armour & Company and United Packinghouse Workers, Local Industrial Union No. 13 of Packinghouse Workers Organizing Committee, etc.*, 13 N. L. R. B. 567.



pay rolls as of May 12, 1939, for the several departments here involved were introduced into evidence. The parties stipulated that these pay rolls be used for determining the question of representation. In view of the lapse of time since the May 12, 1939, pay-roll date, we shall direct the use of the Company's pay roll immediately preceding the date of this Direction for the determination of eligibility to participate in the election.

On the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Globe Newspaper Company, Boston, Massachusetts, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All of the employees of the Company on the Editorial (including artists and photographers), Business Office (or commercial), and Building Maintenance pay rolls, the composing-room boys and helpers and those persons on the Composing Room pay roll whose names are set forth in Appendix C, but excluding those whose names are set forth in Appendices A and B and, in addition, Alexander Haviland, Victor Jones, and F. Ambler Welch, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Globe Newspaper Company, Boston, Massachusetts, an election by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, acting in this matter as an agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the following employees of the Globe Newspaper Company who were on the pay roll of the Company immediately preceding this Direction, including Phyllis Watts whose name has not heretofore been carried on the Company's Editorial

pay roll, those who did not work during such pay-roll period because they were ill or on vacation and employees who were then or have since been temporarily laid off, but excluding those who have since quit or who have been discharged for cause: all employees on the Editorial (including artists and photographers); Business Office (or commercial), and Building Maintenance pay rolls, the composing-room boys and helpers and those persons on the Composing Room pay roll whose names appear in Appendix C, but excluding those whose names appear in Appendices A and B and, in addition, Alexander Haviland, Victor Jones, and F. Ambler Welch; to determine whether or not they desire to be represented by Newspaper Guild of Boston for the purposes of collective bargaining.

Mr. WILLIAM M. LEISERSON, dissenting:

The Guild had a contract with the Company by which the appropriate bargaining unit is established as covering editorial and maintenance employees but not those in the commercial departments. It is undisputed that the Guild is the authorized and exclusive representative of the editorial and maintenance employees, and it is admitted that in the commercial departments a majority of the employees have not indicated they desire representation by the Guild.

I am of the opinion, therefore, that no question concerning representation is presented to the Board with respect to the employees in the appropriate bargaining unit covered by the contract, i. e., editorial and maintenance employees. The only dispute as to representation concerns the employees of the commercial departments. Under these circumstances the duty of the Board is to order a vote among these employees only. If the Guild is chosen as their representative, it may then by collective bargaining with the Company combine commercial employees with the others into a single bargaining unit under a single contract.

The order in the majority decision that the commercial employees shall vote together with the editorial and maintenance employees is a mere device for enabling the Guild to secure the right to represent the employees in the commercial departments even though a majority of the commercial employees do not desire such representation. The fact that on other newspapers the Guild's contracts include commercial employees with the others in a single unit does not seem to me to justify the Board in ignoring the contract in the case before us which excludes the commercial employees. Nor is the Board justified in ignoring its own previous decisions holding that employees

in the commercial departments may constitute a separate appropriate unit.

In the *Milwaukee Publishing Company* case<sup>9</sup> the Board ordered commercial employees voted separately from editorial employees. The only difference between the two cases is that in the earlier one another labor organization contended for the right to represent commercial employees. However, if the Board has the authority to merge the commercial employees with the others, as in the present case, it has the same authority whether another organization is contending for the right to represent commercial employees or not. I do not think the Board is vested with authority to order such a merging in either case.

In the present case a majority of the commercial employees have not indicated that they desire the Guild to represent them. In the *Milwaukee Publishing Company* case there was a claim that some of the commercial employees wanted an Office Workers Union to represent them rather than the Guild. A difference like this does not seem to me to indicate anything as to the appropriateness of a bargaining unit under the Act. If a separate vote of commercial employees was justified in the first case, it is justified also in the present case.

I am of the opinion that the decision ordering the commercial employees to be merged with the others for the purpose of voting is arbitrary.

#### APPENDIX A

Beatrice Bailey.  
John G. Bergschneider.  
Willard DeLue.  
Stephen J. Donlon, Jr.  
Earle B. Edgerton.  
Edward T. Hickey.  
Phillip E. Horne.  
Thomas E. Howard.  
William E. Jones.  
Gene Mack, Jr.  
Marjorie Martin.  
Dennis J. McGuinness.

Raymond F. McPartlin.  
Charles A. Merrill.  
Paul Moore.  
James Morgan.  
Gertrude O'Brien.  
Francis Rosa.  
Ralph G. Semmonian.  
John I. Taylor, Jr.  
Lucien H. Thayer.  
Dora E. Weeks.  
Laurence L. Winship.

#### APPENDIX B

James M. Curran.  
Andrew J. Dozzi.

Ervin A. Harvey.  
Robert T. McCance.

<sup>9</sup> 10 N. L. R. B. 389.

Frank J. Mulcahy.  
Fred J. O'Neal.  
Arthur D. W. Prescott.  
John F. Reid.  
Wilfred H. Roberts.

Nathan S. Sodekson.  
Chas. H. Taylor, Jr.  
Wm. Davis Taylor.  
William O. Taylor.  
Charles M. Wright.

#### APPENDIX C

J. W. Harris—janitor.  
T. J. Buckley—janitor.  
Jos. Sheeton—janitor.

Hazel Gracie—clerk.  
Lucille Sinclair—clerk.  
Fred Simmons—paymaster.